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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,644	01/02/2004	Alicia Bythewood	AB-2-js	1605
7590	06/28/2005		EXAMINER	
Michael I. Kroll 171 Stillwell Lane Syosset, NY 11791			AMERSON, LORI BAKER	
			ART UNIT	PAPER NUMBER
			3764	
DATE MAILED: 06/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

SA

Office Action Summary	Application No. 10/750,644	Applicant(s) BYTHEWOOD ET AL.	
	Examiner L. Amerson	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-15 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. The indicated allowability of claims 5-12 is withdrawn in view of the newly discovered reference(s) to Rovere et al. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 1-4, 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parmater in view of Rovere et al. Parmater discloses an apparatus having a back support member with a first side (50-fig. 1), a headrest having a first side (52) and a means for supporting a neck and head of the user (58). Regarding the language "for use in performing abdominal exercises", "for supporting a back of a user", "for resting a head of a user there against and", "wherein when a user performs an abdominal exercise, said supporting means supports said headrest thereby preventing neck and cervical strain" has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. Parmater discloses all of the limitations of the claimed invention except for a first extension connected between the support means and back support. Thus Rovere et al teach a first extension (21) as

broadly claimed, connected between a supporting means and the back support comprising a guide track having a plurality of apertures and a rail having a plurality of apertures and a locking pin where the rails are received by the track and the apertures are aligned and the pin is received thru the aperture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Parmater in view of the teaching of Rovere et al such that a first extension provides a variable length to the device for a variety of different sized users. As to claim 2, the device further comprising a cradle (54) connected between the supporting means and headrest. Regarding the language "for providing additional neck support and comfort to the user" has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. As to claim 3, further comprising means for adjusting the supporting means (62,64). Regarding the language "for provided by said supporting means" has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. As to claim 4, the supporting means is a spring (fig. 1). As to claim 13, comprising at least one handle (38) pivotally connected to the back support. Regarding the language "for providing stability during abdominal exercises" has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. As to claims 6-9, see the paragraph for claim 1. Additionally, Rovere et al teaches second extension (28a), comprising a rail and locking pin, as broadly claimed, connected between a supporting means and the headrest. It

would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Parmater in view of the teaching of Rovere et al such that a second extension provides a variable length to the device for a variety of different sized users. As to claims 10-12, the recitations have not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. Additionally, It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

b. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parmater and Rovere et al as applied to claim1 above, and further in view of Gehrke. Parmater discloses all of the limitations of the claimed invention except for telescopic support legs. Thus Gehrke teaches telescopic support legs (fig. 1-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include adjustable legs on the device of Parmater in view of the teaching of Gehrke such that legs are capable of being configured to adapt to a variety of different sized users utilizing the device.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. And

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Thur.. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "L. Amerson", with a long horizontal stroke extending to the right.

L. Amerson